STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 26, 2007
v	No. 265842 Genesee Circuit Court
JUSTIN EDWARD DARNELL, Defendant-Appellant.	LC No. 05-015430-FC

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendant appeals of right from his jury conviction of second-degree murder, MCL 750.317, for which he was sentenced to 375 to 600 months' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant contends on appeal that the trial court erred by denying his motion for a directed verdict on the first-degree murder charge and that the evidence at trial was insufficient to establish beyond a reasonable doubt that he was guilty of second-degree murder. Defendant also argues that the prosecution failed to present sufficient evidence to negate his claim of self-defense.

With regard to defendant's first claim, there was no evidence of jury confusion or compromise, and therefore, no error requiring reversal of the jury's verdict of second-degree murder occurred even if the trial court erred by allowing the first-degree murder charge to be presented to the jury. *People v Graves*, 458 Mich 476, 486-488; 581 NW2d 229 (1998). Moreover, we conclude from a review of the evidence that there was sufficient evidence to support the court's denial of defendant's directed verdict motion.

"This Court reviews de novo a trial court's decision on a motion for directed verdict to determine whether the prosecutor's evidence, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime were proven beyond a reasonable doubt." *People v Martin*, 271 Mich App 280, 319-320; 721 NW2d 815 (2006), citing *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001). Circumstantial evidence and reasonable inferences drawn from such evidence are sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

The elements of first-degree premeditated murder are: (1) a death, (2) caused by the defendant, and (3) the killing was willfully committed with deliberation and premeditation. MCL 750.316; *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). With regard to the element of premeditation, "there is no specific time requirement [but] sufficient time must have elapsed to allow the defendant to take a 'second look.'" *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998); see also *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003) ("The interval between the initial thought and ultimate action should be long enough to afford a reasonable person time to take a 'second look.'"). "Though not exclusive, factors that may be considered to establish premeditation include the following: (1) the previous relationship between the defendant and the victim; (2) the defendant's actions before and after the crime; and (3) the circumstances of the killing itself, including the weapon used and the location of the wounds inflicted." *Plummer*, *supra* at 300.

Viewed in a light most favorable to the prosecution, the evidence showed that defendant knew the victim, having stayed a night at his apartment, and that they had already had a confrontation earlier that day that ended when defendant was ordered from the victim's home and left angrily. According to defendant's final version of the events surrounding the killing, the victim demanded for three to five minutes that defendant leave; then, when defendant got up from the couch to use the telephone, the victim refused to let him and instead insisted again that defendant leave. Defendant claimed that at this point, the victim "started grabbin'" defendant's possessions and then "got in his face"; defendant claimed he felt so threatened that he pulled out his knife to "even things up." Defendant stated that he warned the victim by saying, "dog, don't … come in my face like that or don't scream at me," and he explained that it was while he was saying this that he was pulling his knife out of his pocket. Defendant also agreed that he was "pissed off" when, after all he had done for the victim, he was now being kicked out and was not even being allowed to use the telephone. These facts support an inference of premeditation.

The nature and location of the wounds may be supportive of a finding of premeditation. *Plummer*, *supra* at 300; *People v Thomas Berry (On Remand)*, 198 Mich App 123, 128; 497 NW2d 202 (1993). Defendant stabbed and cut the victim sixteen times and three of these wounds were rapidly fatal: two chest wounds that penetrated the victim's lung and heart, and one back wound that cut his aorta. At least two of the slashing wounds appeared to be defensive wounds. Defensive wounds can be evidence of premeditation. *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999); *People v Coy*, 243 Mich App 283, 315-316; 620 NW2d 888 (2000). The defense's expert witness rejected defendant's explanation regarding how the killing occurred because defendant's statement was insufficient to explain the wounds in the victim's back and most of the facial wounds. Moreover, defendant's claim that some of the wounds must have been caused because the knife was on the floor underneath the victim was rejected by his expert as not being consistent with the nature of the wounds.

Finally, most of the wounds, and particularly two of the fatal wounds, were inflicted in the victim's chest, while the remaining fatal wound was inflicted in the victim's back. The victim's body was found lying facedown. A fair inference can be drawn that there was a break in time where defendant ceased stabbing the victim in his chest before he administered the wound in the victim's back. Defendant obviously could not have inflicted the wounds on the victim's chest while the victim was lying facedown on the floor. Consequently, those wounds had to have occurred before the victim was forced to the floor. And it is also reasonable to

assume that the fatal wound in the victim's back was not administered until the victim's back was exposed, that is, when he was lying facedown on the floor, and defendant was on top of him. Support for this scenario is drawn from defendant's description in his statement of forcing the victim to the floor, getting on top of him, and then hitting him while he was lying facedown on the floor.

After the killing, defendant sought refuge at an acquaintance's house and lied to the acquaintance about why he had blood on his clothes. He also lied to the police about why he killed the victim and falsely accused the victim of threatening to kill him. Although of minimal probative value, this behavior shows a consciousness of guilt and an attempt to cover up his behavior; these actions are certainly not inconsistent with premeditation.

Defendant argues that under our Supreme Court's decision in *People v Hoffmeister*, 394 Mich 155; 229 NW2d 305 (1975), a finding of premeditation cannot be based solely on the brutality of the killing and the multiplicity of wounds inflicted. This Court has recognized, however, that a multiplicity of wounds may support a showing of premeditation, consistent with *Hoffmeister*, if there is evidence to support the conclusion that the wounds were inflicted over "such a period of time that there was an intervening period for premeditative reflection by the assailant." *Hoffmeister*, *supra* at 159 n 4.[1] The evidence that defendant stabbed the victim multiple times on his front side and then inflicted several more wounds—including one particularly fatal wound—on the victim's back, presumably after he had been forced to the floor and defendant had gotten on top of him, sufficiently established the existence of an intervening time period in which defendant could take a second look. Therefore, the trial court properly denied defendant's directed verdict motion and permitted the first-degree murder charge to go to the jury.

Regarding defendant's sufficiency challenge to defendant's second-degree murder conviction, this Court reviews a conviction de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), to determine if it is supported by sufficient evidence by "view[ing] the evidence in a light most favorable to the prosecution and determin[ing] whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 408 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992), citing *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

The elements of second-degree murder are "(1) death, (2) caused by defendant's act, (3) with malice, and (4) without justification." *People v Mendoza*, 468 Mich 527, 534; 664 NW2d 685 (2003). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998), citing *People v Aaron*, 409 Mich 672, 728; 299 NW2d 304 (1980). "Malice can be inferred from evidence that a defendant intentionally set in motion a force likely to cause

[1] See *People v Barnhart*, unpublished per curiam opinion of the Court of Appeals, issued November 27, 2001 (Docket No. 224371), p 8; *People v Nelson*, unpublished per curiam of the Court of Appeals, issued May 26, 2000 (Docket No. 218339), p 6.

death or great bodily harm." *People v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998), citing *Aaron*, *supra* at 729. Malice may also be inferred from the use of a deadly weapon. *People v Bulls*, 262 Mich App 618, 627; 687 NW2d 159 (2004).

In this case, defendant cut or stabbed the victim sixteen times with a double-edged "boot" knife—a deadly weapon. Both medical examiners testified that three of the stabbings would rapidly be fatal: one into his lung, one into his heart, and one into his aorta. These repeated stabbings exhibited either the intent to kill, the intent to cause great bodily harm, or the willful and wanton disregard that the acts would result in death or great bodily harm. Therefore, there was sufficient evidence of malice to sustain defendant's conviction of second-degree murder.

Defendant finally contends that the prosecutor failed to prove beyond a reasonable doubt that defendant did not act in self-defense. A person may kill another in self-defense if he "honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force." *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). If defendant was faced with deadly force, then he was justified in responding with deadly force. However, there is no evidence that defendant was faced with deadly force. Even accepting defendant's version of events as true, he was faced with an unarmed man who, although slightly taller and heavier, was thirty years older than him. Also, the victim spent three to five minutes ordering defendant out of his house (a place where defendant had no right to be) while defendant simply sat on the couch and made no attempt to leave. Although defendant claimed he felt threatened when the victim "got in his face," defendant also explained that where he came from, one did not back down from a verbal challenge. In fact, defendant began to withdraw the knife from his pocket when the victim was simply yelling at him to leave. The path to the door was clear and defendant could have left, in accordance with the victim's directive, at any time before the physical confrontation started. Accordingly, defendant was not entitled to claim self-defense because the evidence demonstrated that he was not confronted with deadly force, he had a duty to retreat and did not do so, and he therefore could not honestly and reasonably believe it was necessary to exercise deadly force against the victim.

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood